

## **REMARKS**

### **Status of the Claims**

Upon entry of the amendment above, claims 8-43 will be pending, claims 8, 13, 21, and 40 being independent.

### **Summary of Office Action**

Claims 29, 32, 34, 37, and 39 are rejected under 35 USC §112, first paragraph, as failing to comply with the written description requirement.

Claims 8-15 and 17-39 are rejected under 35 USC §103(a) as being unpatentable over GIGNOUX et al. (U.S. Patent No. 6,390,494, "GIGNOUX") in view of BEJEAN et al. (U.S. Patent No. 5,011,179, "BEJEAN").

Claim 16 is rejected under 35 USC §103(a) as being unpatentable over BEJEAN in view of GIGNOUX and further in view of KENNEY (U.S. Patent No. 6,257,620).

### **Response to the Office Action**

#### **A. Summary of the Amendment**

Paragraphs 0012 and 0013 of the specification are amended to improve their form, i.e., the amendments are of a "cosmetic" nature. Paragraph 0017 is amended to further clarify that which is shown in the drawing and to provide consistency with the claims.

Claims 29, 32, and 37 are amended to specify that the ski has no boot sole-engaging rib "projecting from a longitudinal median plate of the ski," consistent with the subject matter of the originally filed application. The amendment is believed to resolve an issue raised in the aforementioned §112 rejection.

Independent claims 8, 13, and 21 are amended to include subject matter related to that which has been taken from dependent claims 27, 30, and 35, the dependent claims being suitably amended to delete such related subject matter therefrom, specifying that "the upwardly facing recess of the upper surface of the ski extends at least partially to a depth below said upper support surface" of the ski.

New claims 40-43 are added, claim 40 being independent. Independent claim 40 describes the recess as an "interruption in the upper surface of the ski" in contrast with GIGNOUX's "interruption 7 of a rib 8" (see column 2, lines 46-47).

## **B. Summary of the Invention**

The invention is directed to a ski and for ski "system" (i.e., ski with binding), particularly of the Nordic or cross-country type, in which the skier's boot is attached to the ski while allowing the skier's heel free to alternately be raised and lowered as the skier strides relative to the snow. The invention is more specifically related to an improvement in the ski and binding in terms of the modern-day equipment in which, rather than being in front of the boot, the attachment of the boot to the ski is situated beneath the boot, such as at the metatarsophalangeal bending zone of the foot. As explained in paragraph 0007 of Applicants' specification, in spite of the advantages provided by the location of the attachment of the boot in such aforementioned modern-day equipment, a particular disadvantage is the necessity to provide, as part of the binding, a plate between the boot and the top surface of the ski, thereby effectively raising the boot relative to the ski. The invention, therefore, provides a ski and a ski system in which the skier's boot is directly supported on the top surface of the ski despite it being attached to the ski *beneath* the boot. In this regard, see Fig. 4, e.g., in which the binding device 12 (shown schematically; Fig. 1 shows the binding device in greater detail) is situated within a recess 29 formed in the top of the ski, thereby exposing upper surfaces 28 to directly support the sole of the boot, as explained in paragraph 0016.

Exemplary independent claim 21 is copied below. For convenience, reference numerals are added for relating the claim terminology to the illustrated embodiments of the invention, although the scope of Applicants' invention is not to be limited by such reference:

Claim 21. A cross-country ski system comprising:

- a cross-country ski (10) and a binding device (12) having a mechanism (16, 20) to engage a boot (14) to bind the boot to the ski;

- the cross-country ski having a longitudinally extending binding zone (29) spaced from front and rear ends of the ski, said binding zone comprising:

- a pair of transversely spaced apart longitudinally extending upper support surfaces (28) structured and arranged to support directly support surfaces of a sole of a boot at least in a metatarsophalangeal bending zone of the boot when the boot is engaged with a mechanism of the binding device for engagement with the boot;

- an upwardly open longitudinally extending recess (in zone 29 - see FIGS. 3, 4) positioned between said pair of upper support surfaces (28);

- at least in the binding zone (29), the ski has an upper surface width greater than a width of the binding device (see FIGS. 2, 4, 6), thereby exposing the upper support surfaces (28) for direct contact with the sole of the boot on opposite lateral sides of the binding device (12);

the binding device (12) being structured and arranged to be fixed upon the ski (10) in the recess (in zone 29; FIGS. 3, 4) of the binding zone, the binding device having an upwardly projecting rib (24) adapted to be positioned within a downwardly facing longitudinally groove in the sole of the boot (14).

Exemplary dependent claim 22 adds the following requirements to the subject matter recited in parent claim 21:

Claim 22. A cross-country ski system according to claim 21, wherein:  
the cross-country ski system includes no baseplate that would prevent a lower external surface of the boot from direct supporting engagement on the upper support surfaces of the ski.

### **C. Withdrawal of Rejection Based Upon GIGNOUX + BEJEAN**

Applicants request withdrawal of the §103(a) rejection based upon GIGNOUX and BEJEAN at least for the following reasons.

BEJEAN's invention is described as being adapted for a ski shoe "whose toe is attached to the ski" See, e.g., column 1, lines 48-49. This is the type of binding Applicants' invention is an improvement upon or, stated differently, Applicants' invention is an improvement for a type of binding which is described by Applicants in their paragraphs 0004-0006, which is a successor to the type of binding disclosed by BEJEAN, i.e., one in which the boot is articulated about an axis rearward of the front end of the sole (see Applicants' paragraph 0004). In fact, as Applicants explain in their paragraph 0007, it is a particular characteristic of the successor types of binding which raises the boot from the upper surface of the ski.

BEJEAN is so little interested in the binding itself, he fails to illustrate it. He simply points out (column 1, lines 48-49) that the toe of the ski shoe "is attached to the ski, consistent with a prevalent type of binding at the time. On the other hand, BEJEAN's invention is "an improved apparatus for a cross-country ski which imparts an elastic rebound to the shoe in response to a downward movement of the heel into engagement with the ski," as BEJEAN explains in column 1, lines 39-43. More specifically, "[a]s a result of its compression, rib 2 forms a spring which exerts an upwardly directed force F (FIG. 3) on the bottom 4a of groove 4 [of the underside of the boot sole 3]."

For the purpose of mounting his elastic rib 2, BEJEAN illustrates (in the embodiment of Fig. 4) a longitudinal groove 5c in the upper surface 5d of the lower portion 5a of the longitudinal guide rib 5 (see column 3, lines 29-46) which cooperates, during cross-country skiing, with the sole 3 of a ski boot whose sole 3 contains on its lower surface longitudinal groove 4 ..." (see column 2, lines 63-65).

BEJEAN's longitudinal groove 5c (Fig. 4) receives *not a binding device* but an "*elastomeric bar*" 5b, i.e., it receives the upper portion of the guide rib 5 (see column 3, lines 35-38).

As acknowledged on page 3, lines 9-10, of the Office action, "Gignoux et al. do not disclose a recess in the upper surface of the ski."

Applicants respectfully traverse the Examiner's conclusion that BEJEAN renders obvious to have provided a recess in GIGNOUX's ski to insert GIGNOUX's binding.

In this regard, Applicants submit that the statement beginning the paragraph near the middle of page 3 of the Office is incorrect. That is, BEJEAN does not insert a binding into an upwardly facing recess in Fig. 7. First, *the rib 2 is not a binding*. Second, *the recess shown in the cross-sectional view of Fig. 7 is not in the ski; it is in the plate 8*. Also, Applicants submit that BEJEAN fails to discuss the possibility of forming a plate integrally with the ski.

The only purpose behind BEJEAN's recess in Fig. 7 is to present an elastic rebound member 2 (which is not a binding, as asserted on page 3, lines 11-12, of the Office action) to push the underside of the boot away from the ski. In short, *BEJEAN does not insert a binding into a recess*. Further, *GIGNOUX's binding is not an elastic rebound member*. Still further, BEJEAN's plate 8 for the rebound member 2 prevents the boot from directly engaging the upper surface of the ski. The reasoning required for the rejection is that of improper hindsight.

BEJEAN provides no teaching and no suggestion that the plate 8 (see Fig. 7) can be integrated into the ski or that the ski should be made to incorporate a plate 8 therein. Applicants submit that there would be no good reason, no rational explanation, to integrate the plate 8 into the ski particularly, as shown from the side views of Figs. 11 and 12, the length of the plate would merely be that of the front half of the skier's boot. Why, for example, would one skilled

in the art provide for an increased thickness of the entire ski, or at least a significant length of the ski, when the entire purpose of such a plate would be to accomplished by supporting a rib having a length no greater than the front half of the skier's boot? On the other hand, if the plate were to be integrated into the ski along a lesser length, such as the length of half of the skier's boot, why would one skilled in the art choose to limit such a short length to any particular location along the length of the ski, thereby depriving the skier the opportunity to fix a separate plate, e.g., to a position along the length of the ski of his or her choosing? Applicants submit that any conclusion, then, which would have the plate 8 integrated into the ski is not only unsupported by BEJEAN's disclosure, would also be unsupported by logical explanation.

Still further, GIGNOUX says nothing about contact between the ski 9 and the boot 60 and, even if the combination of GIGNOUX and BEJEAN were plausible, the related limitation would not be met. The drawings show no specific engagement. Moreover, if the schematic depiction of the boot 60 shown in GIGNOUX's Fig. 6, i.e., by means of a photocopy of such boot, is overlaid upon Fig. 6, with the lowermost edge of the boot 60 horizontal, and pivot points 61 of the boots of Fig. 6 and the photocopy aligned, a space appears between lowermost edge of the boot and the upper surface of the ski. Still further, rearward of the "rear bar 62" in GIGNOUX's Fig. 1, Fig. 4, and Fig. 6 shows two closely positioned parallel lines atop what appears to be the upper surface of the ski. These lines would appear to be just as likely indicative of some type of boot support above the ski surface as it would be indicative of some sort of engagement, or a suggestion of engagement.

Of course, because GIGNOUX provides no textual description of engagement of the boot and the ski, any conclusion regarding same amounts to speculation and surmise. Further in this regard, the Manual of Patent Examining Procedure (MPEP), (Rev. 5, Aug. 2005) provides the following guidance regarding arguments such as that advanced in support of the rejection of Applicants' claims based upon what GIGNOUX might have disclosed:

When the reference does not disclose that the drawings are to scale and is silent as to dimensions, arguments based on measurement of the drawing features are of little value. See *Hockerson-Halberstadt, Inc. v. Avia Group Int'l*, 222 F.3d 951, 956, 55 USPQ2d 1487, 1491 (Fed. Cir. 2000).

Still further, Applicants respectfully traverse the comment in lines 3-6 on page 7 of the Office action, that "Applicant has provided no evidence ...". The burden is on the Office, not Applicants, in supporting a rejection for obviousness.

Applicants respectfully submit that, for the reasons given above, a convincing line of reasoning as to why the artisan would have found their invention to have been obvious has not been provided by BEJEAN and GIGNOUX. Accordingly, reconsideration and withdrawal of the rejection is kindly requested.

**D. Withdrawal of Rejection Based at Least Upon BEJEAN + GIGNOUX + KENNEY**

Applicants request withdrawal of the §103(a) rejection of claim 16 based upon the combination of BEJEAN, GIGNOUX, and KENNEY for the reasons of record. See Applicants' remarks beginning near the bottom of page 15 of their reply filed on February 12, 2010.

**E. Withdrawal of Rejection for Non-Compliance with Written Description Requirement**

Applicants request withdrawal of the rejection of claims 29, 32, 34, 37, and 39 for failing to comply with the written description requirement of 35 USC §112, first paragraph, the basis for the Examiner's rejection being that "[t]he specification does not explicitly disclose a ski lacking a boot sole-engaging rib."

First, a literal description in the original application for a claim limitation is not necessary for compliance with the written description requirement of §112, first paragraph. See, e.g., MPEP §2163.02.

Second, Applicants' Fig. 3 illustrates in perspective a ski according to the invention, lacking a boot-sole engaging rib, thereby providing support for the aforementioned limitation.

Third, as amended, Applicants believe the limitation as clarified, removes any interpretation of the rejected claims, with regard to a boot sole-engaging rib, as pertaining to any portion of the ski other than that which would project from a longitudinal median plane of the ski.

**D. New Claims**

New dependent claims 40-43 have been added.

Independent claim 40 describes the recess as an "interruption in the upper surface of the ski" in contrast with GIGNOUX's "interruption 7 of a rib 8" (see column 2, lines 46-47). Further,

Applicants submit, BEJEAN fails to teach or suggest a modification of GIGNOUX's ski, or ski and binding, in which the ski would include an "interruption" within which to fit a binding.

Dependent claim 41 adds a limitation of an upwardly projecting guide rib extending upwardly in the longitudinal central zone structured and arranged to engage with a downwardly facing longitudinal groove of the boot.

Dependent claim 42 further specifies adds a limitation of a binding device and that the binding device comprising such guide rib.

Finally, dependent claim 43 specifies that, in contrast with BEJEAN's clear disclosure, the ski of the invention includes no baseplate on the ski in the longitudinal central zone.

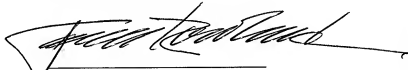
### CONCLUSION

The grounds of rejection advanced in the Office action have been addressed and are believed to be overcome. Reconsideration and allowance are respectfully requested in view of the amendment and remarks above.

Payment is being paid herewith for the fees for a Request for Continued Examination, for an extension of time and for extra claims. No additional fee is believed to be due at this time. However, the Commissioner is authorized to charge any fee required for acceptance of this reply as timely and/or complete to Deposit Account No. 19-0089.

Any comments or questions concerning this application can be directed to the undersigned at the telephone number, fax number, or e-mail address given below.

Respectfully submitted,  
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